Calendar No. 121

98TH CONGRESS
1st Session

SENATE

REPORT
No. 98–73

MAKING TECHNICAL AMENDMENTS TO THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT AND OTHER ACTS

MAY 5 (legislative day, MAY 2), 1983.—Ordered to be printed

Mr. ANDREWS, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 973]

The Select Committee on Indian Affairs, to which was referred the bill (S. 973) to make technical amendments to the Indian Self-Determination and Education Assistance Act and other acts, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

Section 1 of this bill will amend the Indian Self-Determination and Education Assistance Act of 1974 (Public Law 93–638) by adding a new section 9 to provide that this act shall not be subject to the requirements of the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95–224). Sections 2, 3 and 4 of this bill will correct technical drafting errors in three items of legislation enacted in the 97th Congress: Public Law 97–344, to authorize partition of certain restricted lands in the State of Kansas; Public Law 97–386, to take certain lands in trust for the Pascua Yaqui Tribe of Arizona; and a third item contained in the Interior Department Appropriations Act (Public Law 97–394) amending the Federal Statute of Limitations (28 U.S.C. 2415).

BACKGROUND

Section 1 of this bill will amend the Indian Self-Determination and Education Assistance Act of 1974, (Public Law 93–638) by adding a new section 9 to provide that this Act shall not be subject to the requirements of the Federal Grant and Cooperative Agreement Act

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of 1977 (Public Law 95–224). At the time Congress enacted the Indian Self-Determination and Education Assistance Act (Public Law 93–638) a great deal of thought and attention was given to the mechanism by which the act should be implemented, whether by grants or contract. The Congress provided for contracting as the primary vehicle for implementation.

The Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95–224) sets forth general guidelines for financial interaction of the United States with States and local governments and other Federal contractors or grantees. There is no record that would reflect that delivery of services to Indian tribes or their members was ever specifically considered in the enactment of this legislation or that the Congress ever intended to amend or otherwise affect the working of the Indian Self-Determination and Education Assistance Act (Public Law 93–638).

Early in 1981 both the Department of the Interior and the Department of Health and Human Services reviewed the legal effect of Public Law 95–244 on Public Law 93–638. The Solicitor's Office for the Department of the Interior concluded that Public Law 95–244 required that tribes or other Indian entities assuming management of programs of the Bureau of Indian Affairs be funded by grants rather than contract. The General Counsel's office at the Department of Health and Human Services reached the opposite conclusion with respect to programs of the Indian Health Service. We thus have conflicting opinions from two different agencies.

Early in 1982 the Interior Department published draft regulations to conform to the Solicitor's opinion and move from the current system of contracting to a grant mechanism. In April of 1982 the Select Committee on Indian Affairs held extensive hearings on this issue. The testimony of Indian witnesses was uniformly opposed to abandonment of the contract mechanism for implementing Public Law 93–638. The witnesses forcefully noted that the effected programs of the BIA were in fact Federal programs and the funding provided the tribes was a procurement and not a Federal gratuity assisting or supplementing a local activity.

The Department of the Interior has received extensive comment from Indian tribes and other Indian entities eligible to contract under Public Law 93–638 setting forth objections to the proposed grant regulations. Based on these comments the Bureau of Indian Affairs has concluded that implementation of the change from contracts to grants will not encourage tribal assumption of BIA programs but will in fact discourage activity. Thus the policy of local control will be thwarted rather than enhanced.

The remaining provisions of this bill are simply directed at correcting drafting errors in three acts enacted in the last Congress. Section 2 of this bill will correct a land description of a certain parcel of restricted lands in the State of Kansas; section 3 corrects the description of certain lands taken in trust for the Pascua Yaqui Tribe in Arizona; and section 4 corrects references in the most recent amendment of the Federal Statute of Limitations (28 U.S.C. 2415) which referred to the "Indian Claims Act of 1982" when the proper reference should have been the "Indian Claims Limitation Act of 1982".

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Legislative History

S. 973 was introduced by Senator Andrews on April 5, 1983. A hearing was held before the Select Committee on Indian Affairs on April 28, 1983, and the bill was ordered reported out of committee at a business meeting immediately following the hearing by a unanimous vote of a quorum present.

Committee Recommendation and Tabulation of Vote

The Select Committee on Indian Affairs, in open business session on April 28, 1983, by a unanimous vote of a quorum present, recommends that the Senate pass S. 973 without amendment.

Section-by-Section

1. Section 1 amends the Indian Self-Determination and Education Assistance Act (Public Law 93–638) by adding a new section 9 to provide that the provisions of that act shall not be subject to the requirements of the Federal Grant and Cooperative Agreement Act of 1977.

2. Section 2 amends the act of October 15, 1982 (Public Law 97–344) relating to certain restricted lands in the State of Kansas to correct the land description of one of the parcels of land to which the act applies.

3. Section 3 amends Public Law 97–386 to correct the description of lands taken into trust on behalf of the Pascua Yaqui Tribe of Arizona and made a part of that tribe's reservation.

4. Section 4 amends subsections (a) and (b) of section 2415 of title 28, United States Code, by striking out "Indian Claims Act of 1982" each place it occurs and inserting in lieu thereof "Indian Claims Limitation Act of 1982". Subsection (b) of section 4 makes technical amendments to Public Law 97–394 to provide correct references to the Indian Claims Limitation Act by sections.

Cost and Budgetary Considerations

The cost estimates for S. 973 as provided by the Congressional Budget Office are set forth below:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., May 4, 1983.

Hon. Mark Andrews,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 973, a bill to make technical amendments to the Indian Self-Determination and Education Assistance Act and other acts, as ordered reported by the Senate Select Committee on Indian Affairs, April 26, 1983.

Based on this review, it is expected that no additional cost to local, State or Federal governments would be incurred as a result of enactment of this legislation. The bill would correct incorrect descriptions

of land included in Public Law 97–344 and 97–386 and clarify inconsistent references in the 1983 Interior Department Appropriations Act.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill.

The committee believes that S. 2623 will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The only communication received from the executive branch was in the form of testimony offered in open hearing on April 28, 1983. The Department of the Interior and the Department of Health and Human Services supported enactment of this legislation but expressed a preference for an amendment to the Indian Self-Determination and Education Assistance Act (Public Law 93–638) that would provide broad discretion to the head of the affected Department or agency to select the appropriate instrument: grant, cooperative agreement, or contract. The amendment proposed by these agencies is as follows:

Proposed Substitute for Section 1 of S. 973

"SEC. 9. Notwithstanding the provisions of this Act or the Federal Grant and Cooperative Agreement Act (Public Law 95–224), each Secretary responsible for carrying out the provisions of this Act is authorized, after consultation with a tribal government electing under this Act to conduct or administer a program or activity, to determine whether that activity shall be conducted pursuant to a grant, cooperative agreement, or contract."

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 973 are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Section 1 amends the Indian Self-Determination and Education Assistance Act (P.L. 93–638) by adding a new section as follows:

"SEC. 9. The provisions of this Act shall not be subject to the requirements of the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95–224; 92 Stat. 3)."

Section 2 amends the Act of October 15, 1982 (P.L. 97–344; 96 Stat. 1645) relating to certain restricted land in the State of Kansas as follows:

"(2) [the southeast quarter northwest quarter] *the south 20 acres of the east 60 acres of the northwest quarter* of section 12, township 12

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south, range 23 east, sixth principal meridian, Kansas, containing 20 acres and also known as the Black Snake Shawnee Allotment Numbered 69;"

Section 3 amends the Act of December 23, 1982 (P.L. 97–386; 96 Stat. 1946) declaring that the United States holds in trust for the Pascua Yaqui Tribe of Arizona certain land in Pima County, Arizona as follows:

"That subject to all valid existing rights, all right, title, and interest of the United States in the following described tracts of lands *located in township 15 south, range 12 east, Gila and Salt River Meridian*, shall be held by the United States in trust for the Pascua Yaqui Tribe of Arizona and shall be a part of the reservation of such tribe:"

* * * * * * *

Section 4 corrects references in the 1982 amendments of the Federal Statute of Limitations (28 U.S.C. 2415) which referred to the "Indian Claims Act of 1982" when the proper reference should have been the "Indian Claims Limitation Act of 1982."

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